IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.6142 OF 2005

Namdeo Kisan Pawar. ... Applicant.

Versus.

State of Maharashtra. ... Respondent.

Shri Shirish Gupte, Senior Counsel with Mr.Sanjay Thokade for the Applicant.

Ms.M.H.Mhatre, A.P.P. for the Respondent.

CORAM : ABHAY S. OKA, J.

DATED : 4th October, 2005.

P.C.:

1. Heard the learned Senior Counsel appearing for the Applicant and the learned A.P.P. for the State.

2. The application for anticipatory bail is filed as the Applicant apprehends arrest in connection with the offence registered under section 489 and section 420 of the Indian Penal Code. The Application for anticipatory bail is rejected by the Sessions Court by observing that the Applicant had monetary dealings with the co-accused Dilip Shankar Pol. A perusal of the order passed by the Sessions Court shows that the learned Judge observed that an offence under section 489 IPC has been made out. On a plain reading of the F.I.R. and the other material collected during the investigation it is obvious that section 489 IPC may not have application. In another paragraph of the order of

the Sessions Court, it is stated that the offence is under sections 489A, 489B, 489C, 489D and 489E of the IPC.

3. The learned Senior Counsel for the Applicant submitted that there is no material whatsoever against the Applicant to connect the Applicant with any of the offence under sections 489A to 489E of IPC. A perusal of the investigation papers shows that opnly one witness has named the Applicant alleging that the Applicant had taken a sum of Rs.70,000/- from her. The only other evidence against the Applicant appears to be a statement of the co-accused recorded under section 164 of the Indian Evidence Act. Obviously the said part of the statement cannot be considered.

4. Apart from the fact that the leanred Sessions Judge has not recorded any clear findings about the the nature of allegations against the Applicant, the papers relating to investigation show that there is absolutely no material against the Applicant as of today to attract section 489A, 489B, 489D or 489E. Offence under section 489C is a bailable offence. Hence a case is made out for grant of anticipatory bail.

5. Hence the following order is passed:

(i) In the event of the arrest of the Applicant in connection with C.R.No.139 of 2005 registered with Central Police Station, Ulhasnagar-3, Taluka Kalyan, Dist.Thane, the Applicant shall be enlarged on bail subject to furnishing P.R.Bond in the sum of Rs.20,000/- with one or two local sureties in the like amount.

(ii) The Bail is granted subject to condition that the Applicant will attend the concerned Police Station on any two Wednesdays of every month between 11.00 a.m. to 2.00 p.m. till filing of the charge sheet and will cooperative for the investigatioon.

(iii) The Bail is granted subject to condition that the Applicant shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of accusation against him so as to dissuade him from disclosing such facts to the Court or to the Police Officer/ Investigating Agency. The Applicant shall not tamper with the prosecution evidence.

(iv) Any observation made in this order shall not be construed as any finding or any expression of opinion on the merits of the case at the time of trial.

(v) This order will enure to the benefit of the Applicant only till charge sheet is filed. Thereafter he will be free to apply to the appropriate Court for appropriate relief.

(vi) Application is disposed of in above terms.

(vii) The parties to act upon an authenticated copy of this order.

Judge.